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## I. REPLY

### 1. **The compelled speech need not be incriminating for the First Amendment right to remain silent to protect silence.**

In its Response Brief, the State argues that RCW 9A.76.020 as applied to Mr. Steen's actions in this case does not violate Mr. Steen's First Amendment right to remain silent because the deputies sought only Mr. Steen's name and date of birth and such questions were asked in the routine course of the investigation and such information is not incriminating evidence. Response Brief, p. 7. The State's argument fails for several reasons.

First, as pointed out in Mr. Steen's Opening Brief, the Washington Supreme Court has acknowledged that the First Amendment right to remain silent applies in situations where an individual is asked to identify himself to a police officer. *See State v. White*, 97 Wn.2d 92, 640 P.2d 1061 (1982). Indeed, in *Wooley v. Maynard*, 430 U.S. 705, 714, 97 S.Ct. 1428 (1977), the US Supreme Court reasoned that, "the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely **and the right to refrain from speaking at all.**" (Emphasis added). Neither court limited the right to choose not to speak to a situation where the speech would incriminate the speaker.

Second, the State is correct that police are permitted to ask routine questions to identify an individual during the booking or investigation process, but is incorrect that this exception to the requirement that police stop questioning an individual once that individual invokes his Fifth Amendment right to remain silent creates an obligation on the part of the suspect to answer the questions.

When an individual “indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.” *Miranda v. Arizona*, 384 U.S. 436, 473-74, 86 S.Ct. 1602, 1627, 16 L.Ed.2d 694, 10 A.L.R.3d 974 (1966).

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Courts have recognized that the asking of routine questions during the booking process does not generally violate the prohibition against interrogation found in *Miranda* and *Rhode Island v. Innis*, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980). *United States v. Menichino*, 497 F.2d 935, 941 (5th Cir.1974); 1 W. LaFave & J. Israel, *Criminal Procedure* § 6.7, at 504 (1984). An exception for routine booking procedures arises because the questions asked rarely elicit an incriminating response. *United States v. Booth*, 669 F.2d 1231, 1237-38 (9th Cir.1981); *United States v. Mata-Abundiz*, 717 F.2d 1277, 1280 (9th Cir.1983).

*State v. Wheeler*, 108 Wn.2d 230, 237-238, 737 P.2d 1005 (1987).

This exception to *Miranda* exists to permit police officers to continue interrogation for the purposes of obtaining identification information. Police are permitted to ask for identification of a suspect

during the investigatory process but the suspect is *not* required to answer, and the State has cited no authority to support that assertion. Further, the exception to the Fifth Amendment right to remain silent is just that, an exception to the *Fifth* Amendment right to remain silent, not the *First* Amendment right to remain silent. Additionally, as was discussed in Mr. Steen's Opening Brief at page 15 and as will be discussed further below, Mr. Steen's name and date of birth were, in fact, incriminating evidence since Mr. Steen had warrants for his arrest.

**2. Mr. Steen's act of refusing to answer the door when the Deputies knocked and announced is protected speech under the First Amendment and an exercise of his pre-arrest right to not reveal incriminating information about himself under the Fifth Amendment.**

The State argues that Mr. Steen's First Amendment right to remain silent and his Fifth Amendment right to refuse to reveal incriminating information about himself do not apply to Mr. Steen's actions of failing to answer the door when the police knocked. The State's arguments fail.

First, as argued on page 12 of Mr. Steen's Opening Brief, Mr. Steen's First Amendment right to choose not to speak or act protected his choice not to open the door or contact the deputies when the deputies knocked on the door to the trailer. Where police do not have a

warrant, private citizens are under no obligation or requirement to respond to police officers who knock on the door to a building in which the citizen is present. The State cites no authority for the proposition that US citizens are required to answer the door when police knock or are required to speak to police when the police knock on the door.

Second, as pointed out on page 15 of his Opening Brief, Mr. Steen had outstanding warrants for his arrest. In such circumstances, alerting police to his presence or, after having been discovered, providing police with his name and birth date would, in fact, be providing incriminating evidence about himself since such evidence would lead to the discovery of the outstanding arrest warrants.

**3. The State distinguishes of *State v. White* and *City of Mountlake Terrace v. Stone* on grounds without merit in regards for the purpose *White* and *Stone* are cited by Mr. Steen.**

On Pages 8-9 of its Response Brief, the State argues that *White* and *Stone* are factually distinguishable from Mr. Steen's case and, therefore, do not apply. However, Mr. Steen cited these cases as authority only for the proposition that a First Amendment right to remain silent exists. The State's assertion on page 8 of its Response Brief that a First Amendment right to remain silent does not exist is contrary to established law. While *White* and *Stone* do not discuss the

First Amendment right to remain silent in great detail, those cases do acknowledge that such a right does exist.

**4. The State does not fully address Mr. Steen's First Amendment argument.**

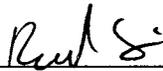
In his Opening Brief, Mr. Steen argues that RCW 9A.76.020 violates his First Amendment right to remain silent. Opening Brief, p 8-12. The State responds by arguing that Mr. Steen's right to remain silent only extends to his revealing incriminating information. Response Brief, p. 7. The State mischaracterizes Mr. Steen's argument. The First Amendment grants all US citizens the right to be free from being compelled to speak by State agents no matter the subject matter of the speech or the situation. The First Amendment right to remain silent extends to more than just self-incriminating statements. US citizens do not have to say anything to police officers or anyone else. To punish Mr. Steen for choosing to remain silent and make the police do their job violates Mr. Steen's First Amendment right to remain silent. The State's argument limiting Mr. Steen's right to remain silent only to self-incriminating statements improperly mischaracterizes Mr. Steen's argument and fails to properly address Mr. Steen's true argument.

**II. CONCLUSION**

For the above stated reasons, RCW 9A.76.020 is unconstitutional as applied to Mr. Steen. This Court should vacate Mr. Steen's conviction and remand this case for dismissal with prejudice.

DATED this 17 day of May, 2010.

Respectfully submitted,

  
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Attorney for Appellant Steen

I hereby certify, under penalty of perjury under the laws of the state Washington that on May 17, 2010, I mailed via first class US mail, postage prepaid a true and correct copy of the Appellant's Reply Brief addressed to:

Mr. Ronald Steen, DOC# 975478  
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and I delivered via legal messenger a true and correct copy of the Appellant's Reply Brief to:

Pierce County Prosecuting Attorney's Office  
930 Tacoma Avenue South  
Tacoma, WA 98402

DATED: May 16, 2010.

Respectfully Submitted,

By   
\_\_\_\_\_  
Reed Speir, WSBA No. 36270

FILED  
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STATE OF WASHINGTON  
BY \_\_\_\_\_  
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